

### **Remarks**

These Remarks are in reply to the Office Action mailed February 12, 2007.

#### **Claim Rejections Under 35 U.S.C. § 112**

Claims 1-4 and 7-12 were rejected under 35 U.S.C. 112 second paragraph as being indefinite.

The Applicant thanks the Examiner for her careful reading of the claims. The Applicant has amended Claim 1 to help particularly point out and distinctly claim what the Applicant regards as the invention.

#### **Claim Rejections Under 35 U.S.C. § 102**

Claims 1-4, 7-12 and 47-50 were rejected under 35 U.S.C. 102(e) as being anticipated by Bertagnoli et al. U.S. Patent 5,571,109 (hereinafter "*Bertagnoli*").

The Examiner directs the Applicant to Figure 7a of *Bertagnoli*. According to *Bertagnoli*, Figure 7a is another example of an implant (column 10, line 38). Thus the Examiner is citing the implant and not a tool for preparing vertebral bodies for an implant. Further, *Bertagnoli* discloses a drill (column 8, line 16), a drill insert (column 9, line 6), a chisel (column 8, line 54), a stamping implement (Column 10, line 17), an auxiliary device (column 7, line 55) and an implant (column 10, line 38) and it is not clear what function is performed by what device. While the auxiliary device in Figure 1A has a handle that attaches from underneath the tines, if the device in Figure 7 has cutting edges above and below the tines, then it is not possible that a handle attaches to the tines since this would interfere with the cutting edges. The Applicant would like to better understand why the handle in Figures 1, 11-13 would not interfere with the cutting edges shown in Figure 7. The Applicant would like to better understand where *Bertagnoli* discloses modifying the implant of

Figure 7 to act as a tool according to Claims 1-4, 7-12 and 47-50. The Applicant would like to better understand where in *Bertagnoli* the tool is disclosed with the limitations of a handle as specified in Claims 2 and 50.

Claim 1

The Applicant would like to better understand where *Bertagnoli* disclose that the first cutting blade extends from the inner side and the second cutting blade extends from the outer side.

Claims 2-4 and 7-12

The Applicant would like to better understand where *Bertagnoli* disclose spacing the first and second cutting blades apart (Claim 3); the first cutting blade being coplanar with the inner side (Claim 4); the first cutting blade being coplanar with the outer side (Claim 8); wherein the first and second cutting blade being positioned to bypass nerves (Claim 12). The leading edges are beveled (Claim 4). The Applicant notes, that the 'notches' in the 'guide keys' present in Figure 7 are aligned in the wrong direction to assist cutting.

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Respectfully submitted,  
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